



**THE ATTORNEY GENERAL
OF TEXAS**

January 16, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Travis S. Ware
Criminal District Attorney
P. O. Box 10536
Lubbock, Texas 79408

Opinion No. JM-1009

Re: Whether Attorney General
Opinion MW-52 (1979) applies to
violations of municipal traffic
ordinances adopted pursuant to
article 6701d, V.T.C.S.
(RQ-1568)

Dear Mr. Ware:

You ask whether Attorney General Opinion MW-52 (1979), which held in part that a county sheriff has no duty to accept for incarceration in the county jail persons arrested only for violations of city ordinances, applies to violations of traffic ordinances enacted by a city pursuant to state law, specifically article 6701d, V.T.C.S. We conclude that the opinion applies to cases involving violations of ordinances which implement article 6701d or which incorporate provisions of the statute, but that it does not apply to cases involving violations of municipal ordinances regulating forms of traffic not covered by the statute.

You inform us that the city of Lubbock and Lubbock County disagree over the classification of prisoners incarcerated in the Lubbock County Jail for the purpose of determining whether the city or the county is responsible for the maintenance of such prisoners. The county asserts, on the strength of Attorney General Opinion MW-52, that a prisoner who is arrested for a violation of a city ordinance is a "city prisoner" regardless of the source or nature of the ordinance. The city, meanwhile, argues that there is a distinction between purely local ordinances, such as zoning or building inspection ordinances, and ordinances adopted pursuant to state law and as part of a comprehensive, statewide system of regulation. The city contends that prisoners arrested for violations of city traffic ordinances adopted pursuant to article 6701d, the Uniform Act Regulating Traffic on Highways, should be classified as "state prisoners."

The relevant issue presented in Attorney General Opinion MW-52 was whether a person arrested for violating a municipal ordinance could legally be incarcerated in the county jail in the absence of an agreement between the city and the county under the Interlocal Cooperation Act, article 4413(32c), V.T.C.S. The attorney general answered in the negative, relying primarily upon section 45.05 of the Code of Criminal Procedure which provides that defendants in cases before the municipal court "shall be committed to the custody of the chief of police or city marshall . . . to be held by him in accordance with the ordinance providing for the custody of prisoners convicted before such . . . court." The attorney general determined that a city thus was responsible for the maintenance of prisoners who are defendants in municipal court. See also Attorney General Opinion O-7353 (1946). The opinion also observed that the state has only a nominal interest in prosecutions involving only violations of municipal ordinances, and no duty to prosecute such cases. The county sheriff, therefore, had no duty to incarcerate persons convicted of violating only municipal ordinances "absent a plain manifestation of the legislature's intent that a city may impose such a duty on the sheriff and the county" or an interlocal agreement.

The opinion did not refer specifically to the kinds of municipal ordinances under consideration. Thus, it leaves the impression that incarceration in the county jail for violation of any municipal ordinance will trigger the city's obligation for the maintenance of a prisoner. An examination of the authorities relied upon by the attorney general, however, helps place the opinion in perspective.

Article 45.05 of the Code of Criminal Procedure was construed to impose on a city the duty to maintain prisoners who are defendants in cases before the municipal courts. Article 45.03 of the Code of Criminal Procedure states the county attorney "may, if he so desires, also represent the State in such prosecutions," which are conducted by the city attorney. In Howth v. Greer, 90 S.W. 211 (Tex. Civ. App. 1905, writ ref'd), cited in Attorney General Opinion MW-52, the court considered a claim by the county attorney that he had the duty to represent the state in municipal court in cases involving municipal ordinances which covered substantially the same ground as state laws. Relying on article V, section 21, of the Texas Constitution, the court held that

the county attorney has the right, and is charged with the duty, to represent the state in all prosecutions instituted for the

violation of the criminal laws of the state in the corporation court, notwithstanding such prosecutions may appear to be for violation of ordinances of the city covering the same ground.

Howth at 213. The fact that in these cases only a violation of a municipal ordinance was charged could not alter their essential nature as state cases, "cases in which the state is not only a nominal, but a real, party." Id. The court expressly declined to consider whether the county attorney had any right to prosecute cases for violations of municipal ordinances regulating purely municipal affairs and which did not involve violations of any criminal laws of the state. Attorney General Opinion V-1147 (1951), also cited in Attorney General Opinion MW-52, answered this question in the negative.

Attorney General Opinion O-5416 (1943) was cited for the proposition that justice courts have no jurisdiction or authority over violations of a city ordinance. That opinion, however, held only that the justice courts were without jurisdiction when the violation of the city ordinance was not also a violation of a penal law of the state. It is therefore consistent with Howth v. Greer, supra. See also Attorney General Opinion V-745 (1948) (a justice of the peace has jurisdiction in cases involving the failure to obey instructions of traffic control signals placed within limits of a city by either state or local authorities in accordance with article 6701d).

Examined in light of these earlier authorities, the import of Attorney General Opinion MW-52 is that the maintenance of prisoners incarcerated in the county jail for violations of municipal ordinances only is the responsibility of the city when

- (1) the prisoner is not incarcerated for violating a criminal law of the state, and
- (2) the ordinance involves the regulation of purely municipal affairs and does not cover the same ground as a criminal law of the state.

We have not examined the municipal traffic ordinances of the city of Lubbock, but it is clear from the discussion thus far that the city is not responsible for the

maintenance of prisoners housed in the county jail for violating traffic ordinances that incorporate the provisions of article 6701d. What is not so clear is whether the city is liable for the maintenance of prisoners when the ordinances either validly deviate from the standards set forth in article 6701d or regulate forms of traffic not covered by the statute. In our opinion, the city is liable when only the second type of traffic ordinance is involved.

In support of its argument, the city points to various sections of article 6701d as evidence of the legislature's intention to create a comprehensive system of traffic regulation throughout the state that includes municipal ordinances adopted pursuant to the statute. Section 26 of the act states that the provisions of the act are applicable and uniform throughout the state and that

no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this Act unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Act.

Section 31 authorizes municipalities to place and maintain traffic control devices in their jurisdictions necessary to warn or guide traffic or to carry out the provisions of article 6701d or local traffic ordinances. Section 169(b) authorizes municipalities to alter prima facie speed limits under certain conditions. Section 143 declares a violation of the act to be a misdemeanor unless made a felony by the act or other state law. The city concludes that a violation of an ordinance adopted pursuant to article 6701d is a violation of the comprehensive system of traffic regulation and, implicitly, of article 6701d itself.

Section 27 of article 6701d, however, recognizes the power of local authorities, including home rule cities, to regulate certain kinds of traffic not governed by article 6701d. Subsection (a) of section 27 provides that the act

shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from

1. Regulating the stopping, standing, or parking of vehicles;

2. Regulating traffic by means of police officers or traffic-control devices;

3. Regulating or prohibiting processions or assemblages on the highways;

4. Designating particular highways as one-way highways . . . ;

5. Regulating the speed of vehicles in public parks;

6. Designating any highway as a through highway . . . or designating any intersection as a stop intersection or a yield intersection;

7. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

8. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

9. Altering the speed limits as authorized herein;

10. Designating school crossing guards and school crossing zones;

11. Adopting such other traffic regulations as are specifically authorized by this Act.

Several of these provisions recognize a city's power to adopt traffic ordinances in pursuit of its police power that either depart in some details from the regulatory standards in the act or that regulate certain forms of traffic not covered by the act. It also demonstrates that a city need not rely solely on article 6701d for authority to adopt ordinances regulating traffic. Section 26 merely confirms that the statute is a limitation on a city's ordinance-making power in those areas governed by the statute.

Read together, sections 26 and 27 mean a city may adopt three kinds of traffic ordinances. First, a city may adopt ordinances that implement article 6701d and incorporate its

provisions. Second, a city may promulgate ordinances that implement but are in conflict with article 6701d where the statute authorizes a departure from its standards. See, e.g., Ex parte Devereaux, 389 S.W.2d 672 (Tex. Crim. App. 1965) (discussed below). Third, a city may adopt ordinances that regulate forms of traffic not governed by article 6701d.

The regulatory variances permitted by sections 26 and 27 of article 6701d no doubt are intended to permit cities to tailor their traffic ordinances to address purely local interests. This accommodation of purely local interests might thus reflect the legislative intention that cities remain responsible for the maintenance of prisoners incarcerated for violations of city traffic ordinances that depart in any way from the standards provided in article 6701d. Attorney General Opinion V-745 (1948), however, concluded that justice courts have jurisdiction over cases involving ordinances punishing the failure to obey traffic control signals, thus suggesting that violations of such ordinances are to be treated as violations of article 6701d.

In Ex parte Devereaux, supra, the court upheld a conviction for speeding in violation of a municipal ordinance which apparently altered the prima facie speed limit set in article 6701d and prescribed a punishment different than section 143 of the statute. The court invalidated the ordinance as to punishment, but said

[i]nsofar as the ordinance alters the prima facie speed limits set out in Sec. 166(a) of Article 6701d, under authority of Secs. 166(a), 167, and 169, and implements said statute without altering or modifying the basic rule established in paragraph (a) of Sec. 166, it is valid and a conviction for violation of the state statute, implemented by the ordinance, with punishment authorized by Sec. 143 of said Article 6701d

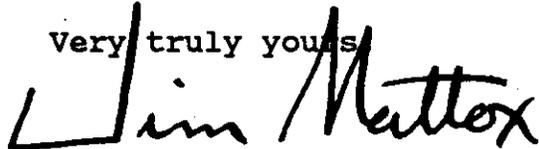
Devereaux at 673. See also Norris v. State, 576 S.W.2d 371 (Tex. Crim. App. 1978). Because persons incarcerated for violating municipal traffic ordinances that implement article 6701d are considered state statute violators, the city is relieved of its obligation to provide for the maintenance of such prisoners once they are accepted for incarceration by the sheriff of the county. See Attorney General Opinions JM-151 (1984); H-169 (1973).

Accordingly, we conclude that Attorney General Opinion MW-52 (1979) does not apply to cases involving the incarceration of persons arrested for violating municipal traffic ordinances that implement article 6701d, V.T.C.S.; the opinion does, however, apply to cases involving violations of municipal ordinances regulating forms of traffic not covered by article 6701d.

S U M M A R Y

Attorney General Opinion MW-52 (1979) does not apply to cases involving the incarceration of persons arrested for violating municipal traffic ordinances that implement article 6701d, V.T.C.S. A city is not responsible for the maintenance of prisoners incarcerated in the county jail for violations of municipal traffic ordinances that implement article 6701d once they are accepted for incarceration by the sheriff of the county.

Very truly yours



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